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Verne, B. Michael

From: [REDACTED]
Sent: Monday, October 06, 2008 4:17 PM
To: Verne, B. Michael
Cc: [REDACTED]
Subject: Licensing Question Relating to Retained U.S. Manufacturing Rights

Mike,

[REDACTED] and I are dealing with a licensing transaction which we believe is not HSR-reportable (i.e., does not constitute the transfer of an asset), and covered by at least one recent interpretation, but we wanted to confirm that you agree.

As in the interpretation listed directly below, this scenario involves an "exclusive" license in which a licensor retains shared manufacturing rights in the U.S. (i.e., both it and the licensee will have the right to manufacture in the U.S.), but who is contractually barred from selling any of those manufactured products in the U.S. Also, as in the situation referenced in the attached letter, here the licensor retains rights to develop and co-promote the product in the U.S. and also the right to manufacture/license a third party to manufacture the product in the U.S. for sale outside the U.S.

<http://www.ftc.gov/bc/hsr/informal/opinions/0702018.htm>

Our question is whether it makes any difference that - for the time being - all such manufacturing (by both parties) is taking place outside the United States and where it's not clear when, or if, that might change. It seems to us that the fact that the licensor retains -- in good faith -- the right to manufacture in the U.S., if and when it so chooses, is enough to fit the scenario within the coverage of the interpretation above. The logic of another interpretation, attached below, would seem to also point in that direction, although based on different facts. <http://www.ftc.gov/bc/hsr/informal/opinions/0002004.htm>

Thanks in advance. Please let me know what you think or if you need any additional facts (in which case we will look to arrange a call that works best with your schedule this week).

Best,

[REDACTED]

I AGREE - NOT REPORTABLE

BM

10/7/08

[REDACTED]

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10/6/2008